IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFEREBCE NO. 2 OF 1999

The Institute of Chartered Accountants
of India, Indraprastha Marg,
New Delhi. .. Petitioner

v/s.

Shri E.H.Lakkadghat, A.C.A.
M/s. Lakkadghat & Co.,
Chartered Accountants,
509, 5th floor, Gokul,
80A, Baroda Street, Iron Market,
Mumbai--400 009. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. Soumya Srikrishna i/by M/s. Kanga & Co. for petitioner.

Respondent present in person.

Mr.S.S.Pakale for Union of India.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 10th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

Under section 21(5) of the Chartered Accountants Act, 1949, the reference has been made to this court on the recommendation of the Council of the Institution of Chartered Accountants of India.

2. The Joint Director of Industries, Aurangabad (hereinafter referred to as the 'complainant') filed complaint before the Institute of Chartered Accountants of India against Shri E.H. Lakkadghat

(for short 'the respondent'). The respondent is the member of the Institute of Chartered Accountants of India and in the complaint it was alleged that the respondent had issued certificates for consumption of raw material and production for the year 1985-86 and 1986-87 in respect of the five units viz. (i) M/s. Cosmo Paints Pvt.Ltd., MIDC, Paithan, (ii) M/s. Western Packings & Containers Pvt.Ltd., B-10, MIDC, Paithan, (iii) M/s. Western Packings & Containers Pvt.Ltd., B-10, MIDC, Paithan, (iv) M/s. S.N.Products, H-5/17, MIDC, Chikalthana, Aurangabad and (v) M/s. Cosmo Paints Pvt.Ltd., MIDC, Paithan. The consumption certificates showed the value of the imported raw material as CIF value. The respondent issued certificates without seeing the records since the imported value of the raw material should have been shown as value of the raw material and not CIF value. It was alleged that as a matter of fact, the units had no record for past consumption. Based on CIF value, the production value has been worked out and customs duty etc. were not taken into account while working out the production figures. The complainant, thus, alleged that the figures were manipulated and certificates issued by the respondent were not correct and thereby, the respondent committed professional misconduct.

3. Upon receipt of the copy of the complaint, the

respondent filed written statement. The complainant submitted its rejoinder. The disciplinary committee examined the complainant as well as the respondent and held that the respondent was guilty of professional misconduct within the meaning of clauses 7 and 8 of part-I of second schedule to the Chartered Accountants Act, 1949. The disciplinary committee forwarded its report to the Council. The Council sent a notice to the respondent to appear before it either personally or through the member of the institute duly authorised and make oral submissions. The respondent submitted his written representation to the Council though he did not appear personally or through the member of the institute before the Council. The Council accepted the report of the disciplinary committee and concurred with the finding of the disciplinary committee that the respondent was guilty of professional misconduct within the meaning of clauses 7 and 8 of part I of the second schedule of the Chartered Accountants Act, 1949 and recommended to this court that name of the respondent be removed from the register of members for a period of three months. This is how the matter is before us.

4. In substance, the defence of the respondent before the disciplinary committee was that the said five parties had maintained the record of

consumption as well as production which were required to be maintained. The respondent verified all such record before issuing the certificate of consumption of raw material as well as production figures of the final product.

5. The disciplinary committee closely examined the certificates issued by the respondent and also the documents produced by the parties before them. With the assistance of the learned senior counsel appearing for the institute and the respondent who appears in person, we considered the available material. The disparities noticed by the disciplinary committee in two certificates in respect of M/s.S.N. Products, in our considered view, were no disparities. The first certificate was issued by the respondent on 12th May, 1987. Later on subsequent certificate was issued dated 6th June, 1987. Merely because in the subsequent certificate dated 6th June, 1987 issued by the respondent, the revised certificate was not mentioned; it was not very material when it was apparent that the subsequent certificate dated 6th June, 1987 issued in regard to M/s.S.N.Products was a revised certificate of the earlier certificate issued on 12th May, 1987. However, the analysis by the disciplinary committee and its view with regard to the certificate issued to M/s. Cosmo Paints Pvt.Ltd. by the respondent that it was incorrect,

does not seem to suffer from any error. The disciplinary committee was not wrong when it observed that with regard to M/s. Cosmo Paints Pvt.Ltd., the certificate was issued on 23rd July, 1986 by the respondent wherein quantity and the corresponding value of the imported raw material sold in the year 1985-86 was shown as 292 MT and Rs.8,86,400/- respectively whereas in the certificate issued on 8th January, 1988, nil figure was shown by the respondent pertaining to the same year. This was surely a case of non-application of mind and want of due care and caution expected of a professional chartered accountant. Broadly, therefore, the conclusion reached by the disciplinary committee that the respondent did not discharge his professional duties with due care, skill and application of mind particularly in respect of some units, cannot be said to suffer from any illegality. The Council accepted the finding of the disciplinary committee and recommended the removal of the name of the respondent from the register of member for a period of three months.

6. Having reflected over the matter, we are of the view that the punishment recommended by the Council is disproportionate to the delinquency proved against the respondent. This is not a case where the respondent failed to consider the records

maintained by the said five parties before issuing the certificates. It does seem that the records maintained by the five parties were seen by the respondent before issuing the certificates but the respondent failed to verify the said records thoroughly and that resulted in issuance of the certificates containing incorrect facts of consumption of raw materials as well as production figures of the final products. For the lapse on the part of the respondent, we are of the view that punishment of reprimand shall meet the ends of justice.

7. We, accordingly, concur with the finding recorded by the disciplinary authority and accepted by the Council that the respondent was guilty of the professional misconduct within the meaning of clauses 7 and 8 of part I of second schedule of Chartered Accountants Act, 1949 and pass the order reprimanding the respondent.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)